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the assured in, or control over, the property to cease. The object of the provision is to guard against a diminution of the motive for vigilance on the part of the assured. Insurance policies are to be strictly construed against the insurer, and liberally in favor of the insured.—*Harrison, J.*

JOHNSON'S ADM'R V. CHESAPEAKE & C. RY. COMPANY.

Demurrer to evidence—negligence. In a civil case either party has the right to demur to the evidence, except where the evidence is plainly against him, or the court doubts what facts should be reasonably inferred from the evidence demurred to; and, where a party has a right to demur, it is the duty of the court to compel the other party to join in the demurrer. The fact of negligence constitutes no exception to the general rule. By the demurrer to the evidence the party demurring is considered as admitting the truth of his adversary's evidence and all just inferences which can be properly drawn therefrom by a jury, and as waiving all of his own evidence, which conflicts with that of his adversary, and all inferences from his own evidence (although not in conflict with his adversary's) which do not necessarily result therefrom.

Where the proximate cause of the death of the decedent was his own negligence, concurring with the negligence of the defendant, there can be no recovery (by his representative). But, although the deceased may have been guilty of negligence, and that negligence may, in fact, have contributed to the injury, yet, if the defendant, by the exercise of ordinary care and diligence, could have prevented the injury, the action may be maintained. It is the duty of one about to cross a railroad track, even at a public crossing, or a licensed way, to use his eyes and his ears to avoid danger to himself; and, if he fails to do so and injury ensues, he cannot recover. Even prior to the enactment of the statute (March 5, 1894) the servants of a railroad company, operating its trains, were required to give notice of approach to a public crossing, and if they failed to do so and injury resulted from such failure, the company was liable therefor, but this did not relieve a person, about to cross the track, from the necessity of taking ordinary precautions for his own safety.

Quære: Upon a demurrer to the evidence, is the negative evidence of a witness that he did not hear certain sounds, in conflict with the positive evidence of another witness that such sounds were made?—*Riely, J.*

EASLEY V. THE VALLEY MUTUAL LIFE ASSOCIATION.

Mutual Life Insurance. In an action upon a policy of insurance in a mutual life insurance company, the by-laws of which company provide "that no question shall be raised as to the right to make, or the necessity of, any mortality assessment made under any certificate of membership, except in the life-time of the member, and within six months from the time when the same was made," it is not competent for the plaintiff, after the death of a member, to offer evidence for the purpose of raising such question, and where the policy has become forfeited, according to its terms, by reason of failure to pay assessments, and the plaintiff relies upon a waiver of such forfeiture, or upon an estoppel to assert it, it is not sufficient for the plaintiff, in order to overcome such forfeiture, to show former

indulgence to the insured, when it appears that he knew when his assessments fell due, that his policy stood forfeited for failure to pay, and that his restoration to membership was granted as a favor to him, upon a proper certificate of unimpaired health, nor to show former indulgence to other members of which plaintiff's intestate had no knowledge. Provisions inserted in an insurance policy, in pursuance of the charter and by-laws of the company, which work a forfeiture of policy upon certain conditions, are so inserted for the benefit of the company, and, it seems, may be waived by the company, and though an instruction was given, which denies the power of the company to make such waiver, yet, if the verdict of the jury upon the facts appears to be plainly right, this court will not reverse the judgment of the lower court on account of such erroneous instruction, as the plaintiff was not prejudiced thereby. Instructions which announce mere abstract propositions of law, however correctly, should not be given when there is no evidence in the case upon which such instructions could be predicated. —*Keith*, P.